

9.07.00.00 - TRIAL PREPARATION PROCEDURES

9.07.01.00 General

It is Departmental policy to strive for settlement in each case, including the time during which the parcel is subject to condemnation proceedings. The assigned acquisition agent should attend all settlement and pretrial conferences.

9.07.02.00 Final Offer of Compensation to Defendant

Subsequent to trial the Court may determine that the State's final offer of compensation was unreasonable and defendant's offer of settlement was reasonable in light of evidence submitted and compensation awarded. In this case, costs allowed to defendant shall include defendant's litigation expenses (CCP Section 1250.410). Litigation expenses include reasonable attorney fees, appraisal fees, surveyor fees, and fees of other experts.

A statutory offer, while made in contemplation of the possible exposure to litigation costs, is not to be justified solely on that basis. The CFRs must also be used to justify such offer.

Since it is imperative that the required final offer reflect all the compensation in the proceeding, the DDC-RW and the State's attorney must discuss and have complete understanding on all matters relating to the compensation in the proceeding. The State's attorney files and serves such final offer.

The District must observe the following procedures in cooperation with the Regional Legal Office.

9.07.03.00 Photographs

The District should take sufficient photographs showing the condition of the subject property so the State's attorney will have a complete picture of its condition. The photographs should be taken prior to construction and conform to the date of the commencement of the action, as nearly as possible. The person taking the photographs should number them and keep a record of the date(s) taken.

PROCEDURES FOR FINAL OFFER OF COMPENSATION

- The fee appraiser or staff independent appraiser submits the appraisal to the Regional Legal Office 60 days or more prior to trial.
- The Regional Legal Office forwards a copy of the appraisal to the District with a recommendation that it be authorized for use in negotiation or trial.
- The District may use the condemnation appraisal for either negotiation or trial purposes as authorized by Legal.
- Forty five days or more prior to trial, the State's attorney and the DDC-RW, or authorized representative, determine whether it is in the best interests of the Department to file a final offer of compensation (statutory offer) with the Court in an amount that exceeds the authorized appraisal.
- The Regional Legal Office files the statutory offer at least 30 days prior to the date of the trial (CCP Section 1250.410). A statutory offer should be supportable by the CFRs and the Administrative Settlement guidelines.
- If the final offer is accepted, the District R/W representative summarizes the discussions with the attorney in writing to support and document acceptance and settlement. This agreement may be placed in the Parcel file if no confidentiality is intended.

9.07.04.00 **Court Exhibit Maps and
Engineering Witness**

The District provides R/W Engineering testimony and preparation of exhibit maps for use in the court trial. See the Right of Way Engineering Chapter for instructions.

9.07.05.00 **Setting Case for Trial**

A parcel in condemnation should be set for trial after all parties having an interest therein have been served, have filed appropriate appearances or are in default. The DDC-RW, or designated representative, is responsible for advising the Regional Legal Office to request that the parcel be set for trial.

9.07.06.00 **Jury Fees**

Once a jury has been demanded, it is the District's responsibility to ensure that jury fees are deposited with the court at least 25 days prior to the trial date.

9.07.07.00 **Other Court Deposits**

Allowance of fees and payment procedures are included in the Acquisition Chapter.